

Amendments to House Bill No. 608 BILL NO. HB608
3rd Reading Copy

Requested by Senator Jesse Laslovich

For the Senate Local Government Committee

Prepared by Greg Petesch
March 30, 2009 (2:41pm)

1. Title, lines 4 and 5.

Following: "LIEN" on line 4**Strike:** remainder of line 4 through "PROCEEDS" on line 5**Strike:** "SECTION 33-24-104,"**Insert:** "SECTIONS 27-18-101, 27-18-202, 27-18-203, 27-18-204, AND
27-18-1502,"

2. Title, line 6.

Strike: "AND AN APPLICABILITY DATE"

3. Page 1, line 10 through line 25.

Strike: everything after the enacting clause**Insert:** "Section 1. Section 27-18-101, MCA, is amended to read:**"27-18-101. Cases in which property may be attached. (1)**

Property may be attached in:

(a) an action upon a contract, express or implied, for the
direct payment of money where the contract:(i) is not secured by any mortgage or lien upon real
property; or(ii) is originally secured and such security has, without
any act of the plaintiff or the person to whom the security was
given, become valueless; and(b) an action based upon a statutory stockholders'
liability; and(c) an action by a local government for the purpose of
ensuring debris removal if it is determined that the underlying
property is worth less than the cost of debris removal.(2) Attachment may not issue if the defendant gives
security to pay the judgment.(3) For the purpose of this section, the guaranty of a loan
in which the only condition precedent to the obligation of the
guarantor is the default of the principal is an unconditional
contract for the direct payment of money."{Internal References to 27-18-101:
27-18-202x }"**Insert:** "Section 2. Section 27-18-202, MCA, is amended to read:**"27-18-202. Plaintiff's affidavit.** When attachment of a
defendant's property is sought, an affidavit must be made by the
plaintiff or someone ~~in his~~ on the plaintiff's behalf stating:

(1) facts which show the defendant is indebted to the

plaintiff in the manner specified in 27-18-101(1);

(2) that the attachment is not sought to hinder, delay, or defraud any creditor of the defendant;

(3) facts creating a reasonable belief that the defendant:

(a) is leaving or about to leave this state taking ~~with him~~ property, money, or other effects which might be subjected to payment of the debt;

(b) is disposing or about to dispose of ~~his~~ property which would be subject to execution;

(c) has the power to dispose of or conceal or remove from the state property ~~which that~~ would be subject to execution; or

(d) is likely to suffer liens or encumbrances on ~~his the~~ defendant's property ~~which that~~ would be subject to execution;

(4) a particular description and the actual value of the property to be attached;

(5) facts creating a reasonable basis for a local government belief that the underlying property is worth less than the cost of debris removal."

{ Internal References to 27-18-202:

27-18-203x 27-18-205 x 27-18-1501x }"

Insert: "Section 3. Section 27-18-203, MCA, is amended to read:

"27-18-203. Affidavit requirements when debt not yet due.

Actions may be commenced and writs of attachment issued upon any debt for the payment of money or specific property before the ~~same shall have~~ debt has become due, or upon a local government debris removal issue, when it ~~shall appear~~ appears by the affidavit, in addition to what is required in 27-18-202:

(1) that the defendant is leaving or is about to leave this state, taking ~~with him~~ property, ~~moneys~~ money, or other effects ~~which that~~ might be subjected to the payment of the debt, for the purpose of defrauding ~~his~~ the defendant's creditors or a local government; or

(2) that the defendant is disposing of ~~his~~ property or is about to dispose of ~~his~~ property, subject to execution, for the purpose of defrauding ~~his~~ the defendant's creditors or a local government."

{ Internal References to 27-18-203:

27-18-901x 27-18-901x }"

Insert: "Section 4. Section 27-18-204, MCA, is amended to read:

"27-18-204. Plaintiff's undertaking. Before issuing the writ, the court must require a written undertaking on the part of the plaintiff, except a local government, with two or more sufficient sureties to be approved by the court, in a sum not less than double the amount claimed by the plaintiff if ~~such the~~ amount be is \$1,000 or under or, in case the amount ~~so~~ claimed by plaintiff ~~shall exceed~~ exceeds \$1,000, then in a sum equal to ~~such that~~ such amount. ~~In no case shall an~~ An undertaking may not be required exceeding ~~in amount~~ the sum of \$20,000. The condition of ~~such the~~ such undertaking ~~shall must~~ must be to the effect that if the defendant recovers judgment or if the court finally decides that

the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant and all damages he the defendant may sustain by reason of the issuing of the attachment, not exceeding the sum specified in the undertaking."

{ Internal References to 27-18-204:
27-18-205 } "

Insert: "Section 5. Section 27-18-1502, MCA, is amended to read:

"27-18-1502. Plaintiff's undertaking. Before issuing the writ, the justice must require a written undertaking in due form on the part of the plaintiff, except a local government, with two or more sureties, in a sum of not less than \$50 or more than \$300, to the effect that if defendant recover judgment, the plaintiff will pay all costs that may be awarded to defendant and all damages ~~which he~~ that the defendant may sustain by reason of the attachment, not exceeding the sum specified in the undertaking."

{ Internal References to 27-18-1502: None. } "

Insert: "NEW SECTION. Section 6. {standard} Effective date.
[This act] is effective on passage and approval."

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